S.B. CIVIL MISC. APPEAL NO. 737/2001

Date 09.03.2006

HON'BLE MR. BHAGWATI PRASAD,J .

Mr. R.K. Mehta for the appellant.
Mr. Rajesh Panwar] for the respondent.
Mr. B.S. Bhati]

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Heard.

The present appeal is filed by the Insurance company against the award of Motor Accident Claims Tribunal. It was in relation to the accident between truck and a motor cycle. According to the Insurance company, the truck driver was not a properly licensed driver. According to the learned counsel for the appellant, the driver only had a license to drive a light motor vehicle whereas, the truck was a heavy motor vehicle. To draw the distinction, he relied on the gross weight of the vehicle which is entered in the registration certification of the vehicle. The entries in the registration certificate show that un-laden weight of the vehicle is 2435 kgs and the gross weight permitted to be ladened in the vehicle was 5300 kgs. The total weight therefore, be 7735 kgs.

According to the learned counsel, as per definition contained in the Motor Vehicle Act, a light motor vehicle would only be one of which unladen weight does not exceed 7500 kgs. According to the learned counsel for the appellant, since the weight of the vehicle exceeded by 435 kgs, therefore, the vehicle was not a light motor vehicle. To press his point, he has placed reliance on a decision of this court in the matter of Ghevarchand Vs.

State of Rajasthan reported in AIR 1965 Rajasthan 175 and Parmjit Bhasi & Ors Vs. Union of India & Ors reported in AIR 2006 SC 440. These two cases were decided in the matters of tax liability. As regards the liability in a Motor accident claims Tribunal's case, what is to be seen is how a case is made out when a vehicle is being driver by a person holding license of a light motor vehicle.

Learned counsel for the respondent has relied upon a case decided in the matter of Ashok Gangadhar Maratha Vs. Oriental Insurance Co. Ltd. reported in AIR 1999 SC 3181 and has placed reliance on para 10 & 11 of the judgment which reads as under :-

> "10. Definition of "light motor vehicle" as given in clause (21) of Section 2 of the Act can apply only to a "light goods vehicle" or a "light transport vehicle". A "light motor vehicle" otherwise has to be covered by the definition of "motor vehicle" or "vehicle" as given in clause (28) of Section 2 of the Act. A light motor vehicle cannot always mean a light goods carriage. Light motor vehicle can be non-transport vehicle as well.
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> 11. To reiterate, since a vehicle cannot be used as transport vehicle on a public road unless there is a permit issued by the Regional Transport Authority for that purpose, and since in the instant case, there is neither a pleading to that effect by any party nor is there any permit on record, the vehicle in question, would remain a light motor vehicle. The respondent also does not say that any permit was granted to the appellant for plying the vehicle as a transport vehicle under Section 66 of the Act. Moreover, on

> the date of accident, the vehicle was not carrying any goods, and thought it could be said to have been designed to be used as a transport vehicle or goods carrier, it cannot be so held on account of the statutory prohibition contained in section 66 of the Act."

In the instant case, the testimony of the driver of the vehicle DW/1 Devi Singh is that he was driving Truck of Tata make 407. According to his statement, no load was being carried in the truck of Tata make 407. There is not evidence on behalf of the Insurance company that the truck was carrying any load. Thus, on the facts obtaining on record, the truck was empty. The Hon'ble Supreme Court in the case of Ashok Gangadhar Maratha (Surpa) has taken a view that in view of Section 66 of the Motor Vehicles Act, unless there is a permit to ply vehicle as a transport vehicle, it cannot be treated to be a transport vehicle and in the background that there was no load carried in the tractor, the tractor continued to be a vehicle which was not carrying weight as was required to bring it within the definition of "transport vehicle". In that background, at the relevant time, when the accident took place, the vehicle was not weighing more than 7500 kgs and therefore, it was in all probability at that juncture, a light motor vehicle in the light of the findings of the Hon'ble Supreme Court.

In view thereof, no case for interference is made out. The appeal having no force is hereby dismissed.

(BHAGWATI PRASAD), J.